UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MONIQUE DA SILVA MOORE,

Plaintiff,

v. 11 CV 1279 (AJP)

PUBLICIS GROUPE, ET AL.,

Defendants.

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New York, N.Y.
March 9, 2012
9:40 a.m.

Before:

HON. ANDREW J. PECK,

Magistrate Judge

APPEARANCES

SANFORD WITTELS & HEISLER, LLP
Attorneys for Plaintiff Moore
BY: DEEPIKA BAINS
JEREMY HEISLER

MORGAN LEWIS
Attorneys for Defendant Publicis
BY: PAUL C. EVANS

JACKSON LEWIS
Attorneys for Defendant MSL
BY: BRETT M. ANDERS
VICTORIA CHAVEY

(Case called)

THE COURT: Be seated.

Okay. Let's deal first with the scheduling order on jurisdictional discovery. I am inclined to grant it but I would like to know more about what's slowing things down there so I guess that's Mr. Evans

MR. EVANS: Yes, your Honor. Primarily, our problems are in terms of timing of the discovery are twofold. First, my client is exclusively located in France. It has about 70 employees. Many of whom are more operational employees, so to get the type of information that the plaintiffs have been requesting and that we're producing, we're dealing with the CFO of the company, sort of the top four or five level officers of the company. So in terms simply getting their time and getting on their schedules we often have difficulties.

THE COURT: Let me make a comment which is, that's not acceptable. And if they don't want to be found to be in jurisdiction here they'd better free up their schedule much more and I know it's -- I was a lawyer once. I know that you have to be delicate with senior executives but a delay because they're only willing to clear an hour every third Thursday or something is not going to cut it.

MR. EVANS: I understand, your Honor. And, perhaps, I misspoke. It's not that we can't get their time in order to confer with them and get information. It's collecting the

documents and types of things that the plaintiffs have requested has taken more time because it requires a lot more of their involvement. But I understand and we have pushed them to provide information. We have provided documents already and we are supplementing this month with additional information and we are responding to a second set of discovery requests by the end of this month.

The other issue we're dealing with is the French blocking law which I know your Honor mentioned at the last conference, so there are some delicate issues with respect to the type of discovery with which we can engage. So we're navigating those waters as well which has slowed us down somewhat in terms of making sure we're not violating French law at the same time we're anticipating French discovery.

THE COURT: Have you and do you anticipate that you will successfully navigate that? In other words, I don't want to give an extension now only to find out that we have to then start considering the Hague Convention or something else that will --

MR. EVANS: One thing I think that the schedule contemplates is that I think we've navigated it with respect to the discovery which we have agreed to produce. There are still outstanding issues that we're working through with the plaintiffs. We have disagreements with respect to the scope of discovery. If they persist in arguing for the type of

discovery they're arguing for, specifically, discovery related to Publicis' interactions with up to 41 subsidiaries with offices in New York other than simply MSL Groupe. If they continue to seek that sort of discovery we will not be able to navigate those waters and we will be invoking the blocking statute to protect ourselves from such discovery. so the schedule sort of contemplates presently that our meet and confer processes will continue and that if need be we'll be able to raise those issues with the Court during the timeframe we've talked about, probably, talking about April.

THE COURT: Okay. Anything from the plaintiff on this other than you seem to agree with the extension?

MR. HEISLER: Nothing, your Honor.

THE COURT: All right. Let me raise one other consideration and maybe the answer is, you are going to have to much shorten your motion schedule. But the way this extension is working out and while I recognize that the June 30 merits fact cut-off date is probably going to slide, although, we haven't really done anything with that, but you are now finishing jurisdictional discovery contemporaneously with finishing alleged merit discovery and, certainly, not finishing the briefing of the jurisdictional discovery motion until lack of jurisdiction motion and until much, much later in the process.

Indeed, taking two plus full months or the briefing.

That is going to mean even though there will be participation by Publicis in the fact discovery that is occurring against MSL and with the plaintiffs, it means if the Court does have jurisdiction over Publicis that after we finish all the other discovery we're going to go into another six months or whatever of discovery vis-a-vis plaintiffs and Publicis. That doesn't seem to be the greatest way to do this.

Anyone have any thoughts on that? I mean how much discovery do you think will be needed on the merits, if any, once Publicis is in or are they really on a sort of responde superior may not be the right way of putting it, but in other words, if MSL is guilty of any of plaintiff's complaint then Publicis is similarly on the hook or is there going to be something else involved?

MR. HEISLER: Your Honor, Publicis has held we will need discovery. We'll try to keep it as condensed as possible.

THE COURT: But you know then you also get into a similar problem which is the discovery is going to be from France, I assume, and I think we all can recognize that because of the French blocking statute that's got to be done carefully and, presumably, carefully means more time than if we were just doing U.S. based discovery.

MR. HEISLER: The only possible suggestion would be a shortened briefing schedule but I don't know if it's really a tenable solution.

THE COURT: For whatever reason you all have thrown an extra week onto each of the opt and reply. The typical time in this district under the local rules is two weeks and one week. Certainly, that's my chamber's rulings and I believe the local rules are the same. You are also taking a month plus from the close of jurisdictional discovery until whoever is the movant is moving. And I think you are going to have to much sharpen that time even if I leave the jurisdictional discovery deadline where it is.

MR. EVANS: From our perspective, your Honor, we have no problem shortening the time. I think we will be the moving party under the current contemplated schedule. We can certainly do within two weeks of the close of jurisdictional discovery and otherwise follow the typical Southern District practices with respect to the time we reply.

MR. HEISLER: We're okay with that.

THE COURT: All right. Okay. July 2 for the motion. That means July 16 for the opt and July 23 for the reply. And, frankly, if you can do it faster, that would be even better. I mean, frankly, if you are the movant on the Publicis side and the discovery is largely to give the plaintiff the ammunition to object to your motion to dismiss any reason why you can't do it even sooner than two weeks.

MR. EVANS: We have a deposition that we are currently contemplating on June 6 assuming that deposition takes place

then we can do it contemporaneous with the end of discovery absent some discovery issues at the end there that we don't expect right now.

THE COURT: All right. Good. So let's do that June 18 for the motion. July 2, opt, and July 9, reply.

And why don't you, Mr. Evans, send in a new proposed order. You can just fax it in later. With the new dates so I can sign it.

MR. EVANS: Yes, your Honor.

THE COURT: Okay. That took care of the easy one and I guess the only other point I would make before we leave this subject is I am not going to be inclined despite the difficulty with French blocking statutes to further extend this period. So whatever discussions you need to have, whatever you need to get done, do it. If it's something you can do fast, if it's something where there is need for meet and confers get it done quickly and get it raised before me quickly if you can't resolve it on your own.

Okay. Now we can do the subpoenas to Dr. Madden and Dr. Vecker. I guess my first question is, why were these issued by Publicis instead of MSL?

MR. EVANS: Your Honor, they were jointly issued by both defendants. I think there was a deposition that day that the MSL lawyers attended and the plaintiffs attended, so we served the subpoenas and we sent a letter but they're jointly

issued subpoenas.

THE COURT: Technically, they are under your signature and only our signature. Who is going to take the lead in the deposition if I allow the deposition?

MR. EVANS: I am, your Honor.

THE COURT: All right. Well, I guess let me ask you all because the agreement you all made that Publicis would participate in discovery was that contemplated that you would on co-motions or co-issues with MSL be able to take the lead or was the contemplation that plaintiff would be doing its stuff and you would attend and do whatever MSL would be taking its discovery and you would also be able to participate so things wouldn't have to be redone as opposed to even though you and MSL are aligned in interest, Publicis taking the lead?

MR. EVANS: I don't know that we contemplated one way or the other that sort of scenario. At the time the thinking in terms of depositions that we were trying to insure it continued during the jurisdictional discovery period were more the depositions of the plaintiffs and MSL witnesses. We, certainly, indicated that we wanted to reserve our right to attend those depositions and ask questions of those witnesses. And I think that this falls within that same category, although, we will be taking the lead in the depositions, I expect that MSL will also be asking questions of those witness in their capacity.

THE COURT: All right. Mr. Heisler. I'm sorry. Ms. Bains.

MS. BAINS: I believe, actually, during the meet and confer on this issue that the contemplation was more of what your Honor was describing that Publicis would attend, if they wanted to, the deposition scheduled by MSL or plaintiffs schedule. So far they haven't attend any of them or asked any questions. So it was, certainly, a surprise that Publicis issued this subpoena and intends to take the lead from plaintiff's point of view.

THE COURT: All right. Does anything change if to the extent this was a joint subpoena effort if I say, okay, it has to be MSL taking lead, does that change anything from your point of view other than which pocket of money gets used on the defendant defense's side?

MS. BAINS: We have our other arguments that we've outlined in the letter.

THE COURT: We are going to get to the other argument. What I want to know, can I move off of whether this a Publicis lead or an MSL lead and see the more merits based arguments?

MS. BAINS: I think it does because, you know, the due process argument made by Publicis that they should get discovery, plaintiffs weren't allowed any discovery against Publicis to support its motion, so I think it would matter.

THE COURT: One other question for both, all three of

you and I see Ms. Chavey is trying to rise. Remind me on the motion or collective action certification, is it only against MSL employees or is it in some way against Publicis? Let's hear from the plaintiffs first and then Ms. Chavey can respond.

MS. BAINS: Plaintiffs were ordered to file the motion, so we had to file it against Publicis and MSL but the employees are MSL employees.

THE COURT: But if the motion applies to Publicis and that's up to you, then I don't see why, particularly, since to some extent it's a game as to who goes first, MSL or Publicis. I don't see why this should make any difference. If you want them to be bound by and I assume -- and I'll ask Mr. Evans in a minute -- that it's understood that if they're participating in the deposition if it's allowed of your quote/unquote "experts" and I assume they will be filing enough briefs when they're due along with MSL, if they are going to be bound by this then this is something that directly affects them if it's only a motion as to MSL and whatever its effect, if any, on Publicis would have to be decided after jurisdiction, then I might come out differently.

In the end, I am not sure it'll make any difference because, ultimately, if I had to guess, you know, if I say, okay, this subpoena is quashed, not because it's a Publicis led subpoena, it wouldn't surprise me that tomorrow or Monday you get served with a subpoena from MSL and Ms. Chavey is shaking

other head "yes" on that. So is this meaningful?

MS. BAINS: Besides what I said, I mean I think --

THE COURT: I think you are saying "no".

MS. BAINS: There's nothing else.

THE COURT: Ms. Chavey.

MS. CHAVEY: Your Honor, the only point that I wanted to address was the one that you raised which is the motion for conditional certification. Does seek relief against both defendants and both defendants are seeking to protect their clients interests by participating in the deposition.

THE COURT: All right then, as to which of you take the lead doesn't distress me and we'll move onto the merits based arguments.

The first argument plaintiffs have made is that you have not decided that these two people, and I take it it's either/or term in terms of the deposition, but you've not decided that they are going to be testifying experts at trial. And with all due respect that argument sounds incredibly silly.

MS. BAINS: Well, the argument is they don't have a complete report yet, so they can't be considered experts who will testify at trial.

THE COURT: But the issue isn't they're testifying at trial. The issue is they're testifying by affidavit on this motion. You chose to put them in on the motion. You didn't have to or you know you did, you didn't but the rule about non

testifying experts is to protect the situation where a lawyer hires a potential expert and says, advise me on this case, but you haven't decided if you are testifying yet. A decision that is almost never made until the day that there is a deadline for that having to be disclosed. But putting that part of the lawyer game aside, these are testifying experts.

MS. BAINS: Plaintiff submitted expert reports from these experts. Their reports were incomplete due to the incomplete nature of the data.

THE COURT: Understood and that's something that presumably you already explained to Judge Carter. I have not read very much of the motions that have been submitted on this because that's Judge Carter's bailiwick and I'm sure you will prep Dr. Madden or Dr. Vecker whoever gets deposed. If I allow the deposition to say that their report is not yet complete and may change when the big bad defendants produce all the data that you want from them etc., but seems to me you either withdraw their reports for purposes of the certification motion or it is fair for the defendants and very promptly to be able to have a deposition of it's -- what am I missing?

MS. BAINS: Well, Rule 26 18B requires a complete report for --

THE COURT: Well, Rule 26 and 37 also preclude experts who have not given a complete report. If this is the best you can do, you know, make your full record because I want you to

have a full record so you can take objections to Judge Carter after I rule which seems to be your side's want but that is a silly argument. I mean, I can't find a better, you know if we didn't have history in this case I might be more polite other than saying it's silly. It is a non winnable argument.

Any other points you want to make either for me to had listen to or so you have a full record for Judge Carter?

MS. BAINS: Well, the arguments in the letter, the second is that there's a low standard for conditional certification and defendant's evidence is not even regarded.

THE COURT: That me be but you put in the expert reports and were the defendants to be able to show that the experts were totally wrong. Let's take a simple case. You know they can't add two and two. And when they added two and two in our report they came up with five and that's the reason that all their information is wrong, why shouldn't they be able to show that to Judge Carter? You can't have it both ways. Either you don't need these experts' testimony for the conditional certification motion in which case pull them and notify Judge Carter accordingly or a quick and dirty deposition is appropriate.

Anything else?

MS. BAINS: I believe that's all we had in our letter.

THE COURT: Is there any other argument that you wish to make whether it was in your letter or to the --

MS. BAINS: Well, we would like to talk about the scheduling if the deposition will go forward.

THE COURT: Okay. Well, that's a different issue. Anything else as to whether it should or shouldn't go forward?

MS. BAINS: No, your Honor.

THE COURT: Okay. The deposition and I take it you prefer to have the deposition go forward as opposed to pulling their affidavits from certification motion.

MS. BAINS: Right. We will comply with the order to --

THE COURT: Okay.

MS. BAINS: -- produce.

THE COURT: Good. Then the order is that the subpoenas as to testimony are not quashed. I don't know if there is any objection to the production requests and then we also have to talk about scheduling.

MS. BAINS: The objections to the production requests we'll have to go through them and we will produce what is required under the law of a testifying expert. We have until Monday to produce or object based on Rule 45.

THE COURT: So should I schedule another conference for Tuesday of next week, is that what you are telling me?

MS. BAINS: No.

THE COURT: Is there anything you object to now so even though there probably going to meet and confer on this

once and not have to have you come back on an emergency basis to deal with it next week?

MS. BAINS: I can't go through request by request but what I will say is if Drs. Madden and Vecker are considered testifying experts we'll produce everything as required by the rule.

THE COURT: Okay. That's fair.

MR. EVANS: If I may, your Honor?

THE COURT: Yes.

MR. EVANS: We mentioned this in our letter as well. The two most crucial aspects of the document requests are that we receive Drs. Madden and Vecker's analytical data files and the programs from those data files that resulted in the conclusions and analyses they reached in their report. So if anything can be reviewed here today I would suggest that's one I think is clearly covered by the rules and clearly appropriate and if we can get a confirmation we'll receive that by Monday we might short circuit future disputes.

THE COURT: Ms. Bains.

MS. BAINS: I am not prepared to address that.

THE COURT: Well, I am prepared to rule on it, so I suggest one of the two of you address it.

MS. BAINS: I will have to review the rules on whether it's required or not but --

THE COURT: Counsel, you want a copy of the Federal

Rules?

MS. BAINS: If it's --

THE COURT: Counsel, I'm going to rule on this. I will help you. If you need a copy of Rule 26, I will give it to you. If you need to confer with Mr. Heisler, confer with Mr. Heisler. We are not -- You know, you knew this issue was on the table. I am not waiting until Monday so that you can show up at the deposition without this and I get a frantic call that their brief is due in two days or whatever afterwards and you've stonewalled the process. You are speaking now or I am ruling now. So if you need Rule 26 I'll hand you the Federal Rules book.

MS. BAINS: Can I have a moment to --

THE COURT: Sure.

(Pause)

MS. BAINS: So with respect to the analytical files and data program we'll produce those.

THE COURT: On Monday?

MS. BAINS: Yes.

THE COURT: Good. Okay.

MS. BAINS: And we don't wish to delay the schedule for briefing at all so we will produce Dr. Madden for a deposition on Monday as noticed in the subpoena. I think we may need to move it back a couple hours to two p.m. I think counsel has represented it'll be a half day deposition.

MR. EVANS: No problem with that, your Honor.

THE COURT: All right. Is there a way you can get the data to them first thing in the morning and do the position at two so it'll save your witness time because otherwise the first hour of the deposition is likely to be Mr. Evans and/or the MSL counsel sitting there going through the data set.

MS. BAINS: Yes. We'll make every effort to do that.

THE COURT: Okay. Good. So ordered.

What other issues, if any, do we have to deal with today?

MS. CHAVEY: Your Honor, I just wanted to clarify, you just made reference to the due date for the motion for the opposition to the motion for conditional certification. The motion was supposed to have been filed on the 29th. Service wasn't effected until Monday, the first of March, so our calculation is that our opposition brief is due on Monday the 19th because of the three days for mailing from when it was served. So I just want to clarify that because you had made reference to it being due on the 14th.

MS. BAINS: Service was effectuated the next morning because we filed under seal the night before.

THE COURT: Okay. So that would formally be the 15th of March and then by adding the three days you get to the 19th. If you can do it sooner, you should do it sooner. I'd like to get all of this wrapped up as quickly as possible. You said

the 19th.

MS. CHAVEY: Thank you.

THE COURT: How are we doing on the review of the 2399 documents and/or whatever else that needs to be done for the predictive coding operation?

MR. ANDERS: We're moving along, your Honor. Just to give you a sense of what's taken place since we were here on February 8th, very shortly after the conference we requested that MSL provide us with e-mail accounts of Haas & Morseman which were the two new people that were added. We then were working with plaintiff's counsel on putting together the revised protocol based on your Honor's rulings.

One area which we had some discussions back and forth was on the date ranges for certain witness. Plaintiffs had some questions regarding date ranges. We chose based on their understanding when a particular plaintiff worked in an office. We worked that out. We revised the date ranges. That was submitted to your Honor by the February 17 deadline. At that time we also requested that MSL provide us with the updated e-mail accounts for those individuals. We received those recently. Those have now all been uploaded onto the system.

The 2399 documents, those have been rereviewed based on your Honor's updated relevancy rulings. I think we're in a position to produce those early next week.

The one issue or question, your Honor, is we had

prepared a streamlined call-back agreement in line with what your Honor had commented on the 8th. I had sent it to plaintiff's counsel early in the week. They had provided their proposed changes. And if I could address one of them now, your Honor, I think it's the main one that we have issue with is they would like to insert language that says -- well, let me go back. The language we proposed was in line with what your Honor said which is, basically, unless we intentionally disclose or intentionally intend to waive the privilege with the disclosure, the privilege is not waived. Plaintiff sought to insert language of taking reasonable steps.

THE COURT: That destroys the 502(D) purpose and puts you back into 502(B). So I would reject that even if it had not been raised by Mr. Anders. And if you want to shortcut all the fighting, I am going to dictate your 502(D) order to the reporter right now unless you've got some other bells and whistles but I'd like to get this over with. Do you have --

MR. ANDERS: If I may present what we have prepared?

THE COURT: Yes. Hand it up.

MS. BAINS: Your Honor, there was one other change that we hadn't gotten confirmation with whether the defense objects to --

THE COURT: Hold on. Let me get the document first so I can --

(Pause)

THE COURT: Okay.

MS. BAINS: In the confidentiality order ordered yesterday the parties had agreed to ten day period after which the party, actually, discovers the inadvertent disclosure in which it must take action and I believe that is not in this order, in this proposed order.

THE COURT: That's correct. And I guess the question becomes since I did endorse Paragraph 22 of your protective order, except the typed version is 502(A) when it should say 502(D). Yeah, let's do it the simple way. Why don't you revise what you've just handed me purely to add the time period after "actual discovery" as an additional paragraph and then fax it in later today and I'll sign it.

MR. ANDERS: I will, your Honor.

MS. BAINS: And I guess the only other change is plaintiffs added a reference to the procedures identified in 26(B)(5)(B) which is also any signed after confidentiality order.

MR. ANDERS: Your Honor, I think that's the same issue. If we include those procedures it's we're now avoiding what we're not doing with, we're intended to do by this order. The idea is I don't want to have to abide by those procedures. The purpose of this order was to relieve the parties of that obligation.

THE COURT: What is it you think 26(B)(5) get's you

that the ten day after discovery process doesn't get you? And frankly since the actual discovery is most likely to be at a deposition it's all going to be taken care of, virtually, simultaneously. I mean, yes, there could be other ways in which MSL and, frankly, the protection goes both ways but we'll say MSL. MSL in prepping for a deposition of a witness or prepping for defending the deposition of one of its witnesses and may find some documents and say, oops, yes, this was privileged and then within ten days send you the notice.

I am not sure what the 26(B)(5) protections get you once there is a fight on any of this as long as you are within my control you are going to get it brought before me promptly one way or the other. And about the only issue could be either they waited 11 days, not ten or regardless of the 502(D) protection it's not a privileged document.

MS. BAINS: Right. The language says reasonable steps to retrieve the information if the party disclosed it before being notified. I guess the ten days takes care of that.

THE COURT: Okay so that's the only thing you'll do is add an extra paragraph here on the ten day revision and everyone sign it and get it back to me today, if possible, Monday if not.

MR. ANDERS: Will do, your Honor. Additionally in terms of progress we've made the protocol called for you to manually review all the e-mails that were in four different

suggestion box type e-mail accounts. We've completed that review. None of those documents were remotely responsive. They were some of them, for example, were responding to survey requests. Again, that has been reviewed and completed. We were also directed to obtain any employment related policies from the company's intranet. We've requested that from the company. We've received it. We are going through those now to make sure they sent us what was encompassed by your order. We've produced those.

As it relates to know the bulk of the review, as of March 6 all of the updated e-mail accounts were loaded into the system. Batches were created. One of the four thousand e-mail random samples of plaintiff's hit words, plus because these additional e-mail accounts were added your Honor directed we would have to do a rereview of defendant's key word hit list. That was previously reviewed. We'll rerun that. So we now so a batch of 13,507 e-mails to review. Those have been batches have been created. That review started earlier in the week. We have had one partner start the review. We will now dive into completing that reviewed by individuals that were at the partner level. I anticipate that will take 135 hours using a 100 document per hour review rate. Presuming we divide up that review by three partners, that's for, approximately, 45 hours per person. Obviously, we have other obligations in this case as well as in other cases, so I would ask or anticipate that we

be provided 30 days to conduct a review of the 13,500. In the meantime though, your Honor, we will produce the 2399 to plaintiffs next week so they can begin working on that.

THE COURT: Can you be producing -- I am not sure the 30 days will work at all but in any event without disturbing your work flow process cause I know you are doing a double review, any reason that you can't do it in waves?

MR. ANDERS: We can, certainly, do it in waves, your Honor. We will do that in waves. For example, the plaintiff's four thousand document hit list, that's been broken out into four one thousand document batches. As a batch is finished we will produce it.

THE COURT: All right. Well, I mean, frankly, I am just concerned that if we don't have the seed set done until the middle of April and that's assuming and once you give it to plaintiffs they have to review things and check the coding and heaven forbid in this case there might, actually, be disputes which I am going to have to resolve. So I know this is not a Staple's Easy Button process but I think you've got to review faster. I would like the seed set totally done by the end of this month. So figure out how to do that. And I'd like plaintiffs response since this will be going on a rolling basis probably within a week after that, maybe ten days but I'd like you all to be sort of jointly working on scheduling this and figuring out how the whole process is going to work timewise

and then get me something in the next few days based on these as the starting assumptions which is seed set done by March 30th from defendant rolling basis. Plaintiff review since it will be going on a rolling basis should finish within a week or so of that. And then figure out how long it's going to take to run each round of the seven possible seven iterations, etc.,. And try to come up with a plan so we'll know when document production should be complete via the predicted coding system.

And, yes, I recognize that because you are doing this at a partner level, review partners do not quite have the same ability as contract attorneys or young associates to just do 18 hour days doing nothing else but reviewing documents but we got to get this moving. Obviously, the fact cut-off of June 30 is most likely going to be extended. When you get me the guesstimate of how long the predictive coding operation is going to take to completion we can then come up with a revision of the cut-off date for what is likely to just be phase one. And whether there will be a phase two or beyond we'll see as we go. I am not going to change the cut-off date now. I do recognize it will have to be changed but, obviously, I still believe in a rocket docket and I want to get this over with.

Any comments from the defense side on -- sorry -- from the plaintiffs on this issue?

MS. BAINS: Outstanding ESU issues, we're also waiting on defendants to give us some information regarding the content

of the shared folders which were discussed at the last conference.

THE COURT: Let me do it one at a time.

Mr. Anders, any news on that or are you still working on it?

MR. ANDERS: I received a breakdown of the types of share folders. I will go through that and give plaintiffs a summary. My thought was describe for them, generally, the types of share folders there are. Based on my initial review it appears to be department based and then client or project based. So I could summarize that, provide that to plaintiffs. And then if there's a particular department or project that they believe is relevant we could discuss that and if we agree, do a deeper dive on that particular share drive.

THE COURT: Okay. Ms. Bains, what else?

MS. BAINS: I believe that's all we have at the moment.

THE COURT: Okay. Anything else on any issues from other either side other than a date for our next conference?

MS. CHAVEY: Judge, there is one thing I'd like to raise. The plaintiffs have asked to us provide deposition dates in May for our witnesses. There are eight to ten MSL witnesses whose depositions have been identified by plaintiffs and we're preparing those dates. What I want to --

THE COURT: I don't know where you are going with this

but does that make any sense until the ESI production is complete or until you are sure when it will be complete?

MS. CHAVEY: That's why I am raising it. We were requested to provide dates in May and my understanding based on your prior ruling was that once -- the depositions have been scheduled several times and they have been put off because of the document discovery and electronic discovery. But our understanding was that you had ruled that once the depositions get set at this point they're going to go forward whether the electronic discovery catches up with this or not.

THE COURT: Ms. Bains or Mr. Heisler, what's your pleasure? You want me to have them set the dates in May? But I don't want when we find out, as we are, that you are still going to be running this e-mail search through at least some time in April, if not beyond, what's your pleasure?

MS. BAINS: Plaintiffs were under the impression that the discovery would be ending at the end of June. So given your Honor's inclination to extend that, I am going to confer with the other attorneys on this case and if there are particular depositions that we want to go forward with without the document we will correspond with defense counsel on those.

THE COURT: All right. Very good. And otherwise, I mean once we have a fairly firm anticipated end date for the predictive coding reduction, at that point when the plaintiff says, okay, we've now figured out that you are going to be done

on tax day, April 15, they say but you won't be done by but I'll use it as your example, you know you are not going to be able to say my witnesses are extremely busy people and they're not available for six months. I am going to expect very quick confirmation of reasonable deposition days thereafter.

Okay. Anything else?

MR. ANDERS: No, your Honor.

MS. CHAVEY: No, thank you.

MS. BAINS: No, your Honor.

THE COURT: OK. When do you all want to come back? I would think early to mid April just to make sure the predicative coding process is running as fast as it possibly can.

MS. BAINS: Perhaps the second week of April.

MR. ANDERS: April 11 works for defendants, your Honor.

MS. BAINS: Fine with the plaintiffs.

THE COURT: Okay. If we do it that week what I would do is give you a five o'clock conference date because I am on trial that week. And if the trial resolves itself, as they often do as we get closer, I would then send you an order saying, okay, we've moved you from five p.m. to two p.m. or something. Alternatively, we can go over to Monday April 16th and give you a more normal time slot, whatever you all prefer.

MS. BAINS: April 16th would be more preferable to

plaintiffs.

MS. CHAVEY: Your Honor, I am not available on the 16 but if that's the desired date we'll cover the conference otherwise.

THE COURT: Okay. April 16th at 2:30.

The usual drill. I require both sides to split the cost of the transcript. I think you know the drill by now. But I will one last time say that pursuant to 28 U.S.C. Section 636 Federal Rules of Procedure 72, any party aggrieved by my rulings today has 14 days to bring objections to Judge Carter. The 14 days starts running immediately since you've heard my ruling from the bench regardless of how soon you get the transcript from the court reporter. I likely will not say this at every conference but it, certainly, applies throughout.

Okay. Thank you all. We are adjourned.

(Adjourned)